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*Attorneys for Defendant
Fusion Orthopedics, LLC*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Extremity Medical, LLC,

Plaintiff,

v.

Fusion Orthopedics, LLC,

Defendant.

Case No.: 2:22-cv-00723-PHX-GMS

JOINT STATUS REPORT

Pursuant to the Court's December 13, 2023 Order (Doc. 108) and the Court's September 10, 2024 Order (Doc. 113), Extremity Medical, LLC ("Extremity") and Fusion Orthopedics, LLC ("Fusion") hereby submit this Joint Status Report to provide the status of *Inter Partes* Review IPR2023-00894 concerning U.S. Patent No. 11,298,166 ("the '166 Patent"), the patent at issue in this case.

On November 4, 2024, the U.S. Patent Trial and Appeal Board ("PTAB") issued its Final Written Decision, in which it held that Fusion has shown by a preponderance of the evidence that 14 of the 15 claims (1-10 and 12-15), including all independent claims, of the '166 Patent are unpatentable. Claim 11, one of the claims that Extremity has asserted against Fusion here, was not found to be unpatentable. Extremity's position is that, as it stands, this case can proceed on Extremity's infringement claim against Fusion as to claim 11. Fusion's position is that dependent claim 11 is clearly invalid and provides no patentably distinct limitation to what the PTAB has already found to be unpatentable, preventing this case from proceeding.

Both parties still have the ability to appeal the PTAB's decision to the U.S. Court of Appeals for the Federal Circuit. The deadline to file a notice of appeal with the Director of the U.S. Patent and Trademark Office is January 6, 2025. On December 13, 2024, Fusion filed an *ex parte* reexamination with the USPTO asserting that the only remaining dependent claim 11 is also unpatentable over additional prior art. *See* Exhibit A. Accordingly, the parties are in agreement that the stay of this case should remain in effect until all appeals with respect to the PTAB's decision are exhausted or the time to seek appeal has passed, as well as the resolution of the *ex parte* reexamination, whichever is later.

DATED: December 16, 2024

By: /s/ Michael J. Zinna

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DATED: December 16, 2024

By: /s/ Corby R. Vowell
(signed with permission)

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